

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEON WARREN WEATHERS,

Plaintiff,

Case No. 1:08-cv-722

v

HON. JANET T. NEFF

HOLLAND POLICE DEPARTMENT,
et al.,

Defendants.

OPINION

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that this Court dismiss the petition pursuant to FED. R. CIV. P. 41(b) and W.D. MICH. L. CIV. R. 41.1 for want of prosecution and failure to comply with the rules and orders of the Court (Dkt. 38). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections, approves and adopts the Report and Recommendation as the opinion of this Court, and enters Judgment pursuant to FED. R. CIV. P. 58.

Plaintiff argues in his "Objections to Report and Recommendation" that the Court should not dismiss this matter for his failure to follow the Court's rules and orders because he does not have a law degree, has not passed the bar exam, he has been unable to find a lawyer to take his case, and he needs more time to find one (Dkt. 39). Plaintiff also suggests that the importance of the claim

should allow the case to continue. He states that a case of this magnitude, where a Black male spent a year in jail for riding his bicycle without lights, should be heard on the merits (*id.*). In Plaintiff's further "Response to Defendant(s) [Response]," Plaintiff claims he was incarcerated and was not allowed to appear for the February 2009 Rule 16 Conference; and regarding the more recent motion, he was not acting irresponsibly: he was not aware of procedures for adjournment; was in college final exams, then caught the flu; and has now received advice which will allow him to better comply with this Court's requirements.

Plaintiff's argument is unpersuasive. Plaintiff has had ample time to pursue his claim and comply with the Court's requirements but has failed to do so. Plaintiff's contentions do not merit this Court's further consideration because his reasons for noncompliance and his other representations are inconsistent and are unsupported by the record. For example, Defendants point out in their Response to Plaintiff's Objection (Dkt. 40), that Plaintiff's jail sentence resulted from his guilty plea to criminal charges and probation violations, not from actions complained of in this civil case.

As the Magistrate Judge noted, Plaintiff has done nothing to pursue or prosecute his claims but ask for another chance when dismissal of his case is imminent (Rep. & Rec. at 2). Plaintiff's statement that he has received pro bono advice that will allow him to comply in the future with the Court's requirements merely provides another general assurance that the Court finds unavailing. Plaintiff's objections are therefore denied.

For these reasons and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Opinion would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997).

A Judgment will be entered consistent with this Opinion.

Dated: August 14, 2009

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

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JUDGMENT

In accordance with the Opinion entered this date:

IT IS HEREBY ORDERED that the Objections (Dkt 39) are DENIED and the Report and Recommendation (Dkt 38) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Complaint (Dkt 1) is DISMISSED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Date: August 14, 2009

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge